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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: April 29, 2021)	Case No.: PSH-21-0042
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_____)	

Issued: June 25, 2021

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the Individual”) for access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled, “Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ For the reasons set forth below, I conclude that the Individual’s security clearance should be granted.

I. BACKGROUND

During a Local Security Office’s (LSO) background investigation of the Individual, derogatory information was discovered relating to the individual’s criminal history. Because the Individual was unable to resolve this information, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter on April 29, 2021. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e) and (g), the Individual presented the testimony of two witnesses and testified on his own behalf. *See* Transcript of Hearing, Case No. PSH-21-0042 (hereinafter cited as “Tr.”). The LSO submitted 12 exhibits, marked as Exhibits 1 through 12 (hereinafter cited as “Ex.”). The Individual submitted 17 exhibits, marked as Exhibits A through Q.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

¹ The regulations define “Access authorization” as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance citing Guideline J of the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective June 8, 2017 (Adjudicative Guidelines).

Guideline J (Criminal Conduct) provides that “[c]riminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.” Adjudicative Guidelines at ¶ 30. The conditions that could raise a security concern and may be disqualifying include a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness. Adjudicative Guidelines at ¶ 31.

The LSO alleges that the Individual exhibited the following pattern of criminal conduct:

- A. In June 2019, police charged the Individual with Speeding and he was arrested for an outstanding bench warrant,
- B. In 2019, the Individual had three outstanding warrants for Contempt of Court violations,
- C. In February 2019, police charged the Individual with No Driver's License and in April 2019 he failed to appear in court on the charge, resulting in a bench warrant being issued,
- D. In March 2018, police charged the Individual with Driving While License Suspended and No Vehicle Liability Insurance,
- E. In November 2018, police charged the Individual with Driving While License Invalid and Failure to Appear,
- F. In May 2017, the Individual was charged with three unlisted charges,
- G. In April 2015, the Individual was charged with Contempt of Court.
- H. In February 2014, police charged the Individual with No Vehicle Inspection Sticker, Failure to Wear a Seat Belt, and Failure to Establish Financial Responsibility (Vehicle Insurance).
- I. On April 20, 2010, police charged the Individual with Failure to Maintain Financial Responsibility and No Inspection Sticker. A warrant for his arrest was issued because he failed to pay the resulting fine.

Ex. 1 at 1-2. The Individual has acknowledged the accuracy of these allegations. Tr. at 12-13. Accordingly, the LSO's security concerns under Guideline J are justified.

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The entire process is a conscientious scrutiny of several variables known as the “whole person concept.” Adjudicative Guidelines ¶ 2(a). The protection of the national security is the paramount consideration. The regulatory standard implies that there is a presumption against granting or restoring a security

clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

IV. FINDINGS OF FACT

The Individual testified on his own behalf at the hearing. The Individual testified that he has satisfied all of his outstanding obligations resulting from his traffic violations, failure to maintain insurance and driving without a license, with two exceptions, which he expects to satisfy soon.² Tr. at 15-16, 18, 20, 22-23, 28-31, 33, 39, 46-48. Once he pays that debt, which he initially estimated at \$2,000, he will be eligible to obtain a driver’s license.³ Tr. at 23, 46-48. He subsequently estimated this liability at \$1,076. Tr. at 48. He further testified that he has resolved all outstanding bench warrants issued against him.⁴ Tr. at 16-19. He testified that he obtained an occupational driver’s license in June 2020 that allows him to operate motor vehicles at work and to transport himself to and from work.⁵ Tr. at 44, 47. He testified that he could have avoided some of his problems if he had been aware of this option sooner. Tr. at 44-45.

The Individual testified that, while he had no excuse for his many violations, he made the decision to drive to maintain his income, to complete his education, and to see his family, and that he saw no other options. Tr. 20-21, 23, 27. Nevertheless, the Individual characterized this conduct as “wrong” and realizes that he is in his present predicament because he “messed up.” Tr. at 21, 38, 42. The Individual testified that he is now able to afford insurance, since he has a career. Tr. at 24. However, he admitted that he is “a little behind” on his insurance payments. Tr. at 52. He is determined to “get [his] life together” and believes that he is changed and has “become a better man” and that he “is not the same person as before.” Tr. at 38, 42-43. The Individual testified

² This testimony is corroborated by Exs. C-Q.

³ This testimony is corroborated by Ex. A, an online document issued by a state Department of Public Safety, indicating the conditions needing to be satisfied for the Individual to become eligible for a driver’s license. Ex.

⁴ This testimony has been corroborated by other evidence in the Record. Ex. 11; Ex. 12.

⁵ This testimony is corroborated by Ex. B, a judicial order granting a restricted and occupational license to the individual.

that he has not had any citations or warrants since 2019. Tr. at 42. He is exercising more caution when he is driving, and he is being careful not to speed. Tr. at 52-53.

The Individual testified that he has discussed his criminal history and his driver's license status with his management. Tr. at 37-38. They have allowed the Individual to work overtime to earn enough money to address his outstanding fines. Tr. at 37-38. He testified that his ability to pay his outstanding fines was slowed during the COVID-19 lockdown because he could not work overtime, and because his mother and younger siblings needed financial help during that period. Tr. at 39, 43.

The Individual's supervisor (the Supervisor) testified on his behalf at the hearing, stating that he works with the Individual daily. He testified that he and the Individual had discussed the Individual's criminal history and his driver's license and car insurance status. Tr. at 58. He worked with the Individual to help him devise a plan to pay off his outstanding fines, so that he could continue to work for the DOE contractor. Tr. at 58. The Supervisor testified that the Individual implemented this plan and was "going along strongly." Tr. at 59. However, the Individual's progress was slowed by the lack of available overtime during the COVID-19 crisis and by the Individual's need to provide financial assistance to his family during the COVID-19 crisis. Tr. at 59. The Individual sought the advice of the Supervisor before extending this assistance to his family, and the Supervisor counseled him to help his mother and younger siblings. Tr. at 60. The Individual informed the Supervisor that most of his outstanding fines had been paid. Tr. at 59. The Supervisor convincingly testified that, over the past three years, he has observed the Individual "become a responsible adult." Tr. at 60, 62, 66. He further testified that the Individual has "matured greatly over the last two years." Tr. at 60, 66. The Individual "has taken on more responsibility and handled it well... and that is not an easy thing, because a lot of people depend on him." Tr. at 61. The Supervisor testified that the Individual's occupation is vital for protecting the health and safety of the other employees at his facility, and that the Individual is responsible for ensuring that the employees are able to "safely do their job and go home to their kids and [spouses]." Tr. at 67.

The Individual's Mother (the Mother) testified on his behalf at the hearing. She testified that the Individual is trying to drive more cautiously. Tr. at 76-77, 82-83. She further testified that the Individual is diligently addressing his outstanding tickets. Tr. at 77. The Mother testified that the Individual has been providing her, his grandmother, and his younger siblings with financial support. Tr. at 77-79. The Individual has been active in his church and mentors young men. Tr. at 79. She further testified that her son "cares about others." Tr. at 80. She further vouched for his basic honesty. Tr. at 80-81.

In her closing statement, the DOE Counsel stated her belief that, looking at the mitigating factors for Guideline J, the issues that led to the Individual's pattern of criminal behavior have been resolved. Tr. at 85-86. She cited the Individual's financial difficulties as a major reason for his citations and stated that the Individual now has a stable job and is meeting his financial obligations. Tr. at 86. She further noted that the Individual reiterated a commitment to his continued personal growth. Tr. at 87

V. ANALYSIS

During his early 20's, the Individual exhibited an extremely irresponsible disregard of traffic laws, which led him to receive a significant number of speeding tickets. Instead of changing his behavior and paying the fines resulting from those tickets, the Individual chose to ignore the tickets and to continue speeding. As a result, he incurred significant financial debts to several municipalities and several warrants for his arrest were issued. Because of the number of tickets issued to him and his failure to pay the fines resulting from his tickets, he lost his driver's license, and it became impossible for him to insure his motor vehicle. Faced with a need to work in order to resolve these debts, continue attending college, and provide financial support to his mother and younger siblings, the Individual made the poor decision to continue driving without insurance or a license. This decision led him to incur further citations and increased his debt to several municipalities.

This history alone suggests that the Individual would be a poor candidate for a security clearance. However, the Adjudicative Guidelines instruct me to employ the "whole person concept" which requires that I carefully weigh a number of "variables of an individual's life" in order to determine whether that individual is an acceptable security risk. Adjudicative Guidelines at § 2(a). In the present case, I find that the Individual has resolved the security concerns raised by his criminal activity by showing that he has grown and matured, changed his behavior, and taken meaningful and appropriate actions to address the consequences of his past actions, and by doing so has exhibited good judgment, reliability, and trustworthiness during the past two years.

The hearing testimony of the Individual, his supervisor (the Supervisor), and the Individual's mother have convinced me that the Individual has grown and matured and now exhibits reliability, trustworthiness, and good judgement. During the Individual's testimony, he fully acknowledged his previous poor judgment and took responsibility for his actions. His testimony, and that of the Supervisor, have convinced me that he has learned from his mistakes and has become a responsible, law-abiding adult. He has further shown that he has taken actions to resolve his outstanding debt and to restore his driving privileges. In addition, the Individual has shown that he has earned a college degree and has been meaningfully employed with a DOE contractor since 2018, in a position requiring a very high level of responsibility. Tr. at 61.

Guideline J sets forth four conditions that, if present, may mitigate security concerns arising under Guideline J. Two of those mitigating conditions are present in the instant case. Section 32(a) provides that security concerns arising from criminal conduct can be mitigated when: "So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Adjudicative Guideline J at § 32(a). Two years have passed since the Individual received his last ticket and, as I have discussed above, the evidence he has submitted has convinced me that his criminal activity is unlikely to recur. Section 32(d) provides that security concerns arising from criminal conduct can be mitigated when: "There is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement." Adjudicative Guideline J at § 32(d). In the present case, there is abundant evidence of successful rehabilitation: The Individual has acknowledged that he exercised poor judgment and behaved inappropriately in the past, and has exhibited a change in behavior for the past two years. He has been actively engaged in providing restitution. He has obtained a college degree and established a

good employment record for the past three years. Moreover, he has engaged in constructive community involvement by mentoring young men at his church.

For these reasons, I find the Individual has presented sufficient evidence to satisfy the mitigating conditions under § 32(a) and § 32(d).

VI. CONCLUSION

For the reasons set forth above, I conclude that the LSO properly invoked Guideline J. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guideline J. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be granted. The parties may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals